



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 13th day of January 1997

Bellair Incorporated,

**Violations of 14 CFR 399.81 and
49 U.S.C. § 41712**

CONSENT ORDER

Bellair Incorporated (Bellair) provides scheduled air-taxi service in Alaska pursuant to Part 298 of the Department's regulations (14 CFR Part 298). Under those regulations, Bellair is required to file Form 298-C reports detailing the service it schedules and the number of flights actually completed by the airline. Based on Bellair's Form 298-C reports filed over the last two years, we have concluded that Bellair has maintained schedules in the Official Airline Guide (OAG), and published schedules of its own, which significantly overstate the amount of service the carrier actually provides in its Alaska markets. We regard Bellair's continued inaccurate representation of service as unrealistic scheduling in violation of 14 CFR 399.81 of the Department's regulations. We also consider Bellair's holding out of service that is not provided to be an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

According to Bellair's Form 298-C reports, beginning with the quarter ending on June 30, 1994, and up to the most recent quarter ending on March 31, 1996, Bellair scheduled 11,129 flights. However, only 3,370 of these flights were actually completed by the airline. Thus, less than one-third of all flights were completed by the airline. In the same time period, the highest percentage of flights that Bellair completed in any one quarter was 44 percent. While the percentage of scheduled flights is only one indication of whether a carrier is publishing realistic schedules, Bellair's performance is unacceptable.

In mitigation, Bellair states that its scheduled flight performance was significantly better than its filings with the Department indicate. It asserts that many of its scheduled flights reported as not performed may have in fact operated as charter

flights, although with some delay, since the airline's practice had been to consider all flights that operated more than one-quarter hour late as charter flights even if they operated over a scheduled route. By amending its records to include late-performed service, Bellair claims that its completion rate increases to more than fifty percent of its flights. Bellair states that it will take steps in the future to ensure that its schedules are reasonably accurate.

We do not believe it reasonable to expect absolute adherence to published schedules by carriers in Alaska. Flights must be canceled for numerous reasons, including bad weather, equipment failures and sudden crew illness. Because of the relatively low traffic in many Alaskan markets, we can foresee flights also being canceled or stops being omitted because there are no passengers or freight to transport. We have no objection to the cancellation of an occasional flight for lack of traffic provided that the carrier rigorously follows the practice of checking with the outlying station to ensure that no traffic is present. If any traffic is present, the carrier must strive to operate the flight. If a carrier has reason to know that it is likely to cancel more than an occasional flight due to a lack of traffic, the carrier should include in all published schedules it distributes independently of the OAG a statement that service is subject to the existence of traffic. In the OAG, the carrier should either use notations with its listings to indicate "subject to confirmation" or some similar comment that denotes a flag stop dependent on traffic, or in the alternative, the carrier should reduce its listed schedules to realistically reflect the actual operations of a particular flight.

In order to avoid litigation, and without admitting or denying the violations described above, the Enforcement Office and Bellair have reached a settlement of this matter. This order requires Bellair to cease and desist from future violations of section 399.81 and 49 U.S.C. § 41712. Under the order, Bellair will be assessed a \$2,000 civil penalty in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the assessed civil penalty, \$1,000 will be paid under the terms set forth below. The remaining \$1,000 will be forgiven if Bellair refrains from further violations of the Department's applicable requirements for a period of one year following the issuance of this order. The Enforcement Office believes that the assessment of a civil penalty of \$2,000 in this instance is warranted in light of the nature and extent of the unrealistic scheduling practices by Bellair together with the carrier's size and financial condition. This order and the penalty that it assesses will provide a strong incentive for all carriers to schedule flights realistically.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as in the public interest;

2. We find that Bellair Incorporated violated 14 CFR 399.81 and 49 U.S.C. § 41712 by unrealistically scheduling flights in the Alaska market and thus, engaging in an unfair and deceptive practice and an unfair method of competition;

3. We order Bellair Incorporated to cease and desist from further violations of 14 CFR 399.81 and 49 U.S.C. § 41712, as described above; and

4. Bellair Incorporated is assessed \$2,000 in compromise of civil penalties that might otherwise be assessed for violations found in ordering paragraph 2 of this order. Bellair Incorporated shall pay \$1,000 of this amount within 30 days of the date of issuance of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire, " to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the attached instructions. The remaining \$1,000 of the assessed civil penalty shall be suspended for one year from the date of issuance of this order and then forgiven unless Bellair Incorporated fails to make payments as directed by this order or, within that year period, engages in any other violation of the requirements described in this order, in which case the unpaid portion of the \$2,000 penalty shall become due and payable immediately. Failure to pay the penalty as ordered will subject Bellair Incorporated to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)